

SENATE BILL No. 143

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-25-3-9; IC 16-18-2; IC 16-41-39.4; IC 34-30-2-83.4.

Synopsis: Childhood lead poisoning prevention. Specifies certain requirements for laboratories, the state department of health, local health departments, residential rental property owners, child care providers, and retail establishments related to childhood lead poisoning prevention. Provides for a civil penalty to be assessed by the state department of health for noncompliance with certain provisions. Establishes the childhood lead poisoning prevention fund for outreach and prevention activities. Establishes a lead-safe housing advisory council to make recommendations related to lead poisoning prevention. Makes conforming amendments. (The introduced version of this bill was prepared by the health finance commission.)

Effective: Upon passage.

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January 10, 2008, read first time and referred to Committee on Health and Provider Services.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 143

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-25-3-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) If a
3 disclosure document recorded under section 8(a)(1) of this chapter
4 reports the existence of an environmental defect on a property, a person
5 who has a financial interest in the property may record, in the same
6 county recorder's office in which the disclosure document is recorded,
7 a document that reports that the environmental defect has been
8 eliminated from the property.

9 (b) **Except as provided in subsection (c)**, a professional engineer
10 registered under IC 25-31-1 who does not have a financial interest in
11 the property must certify a document filed under this section.

12 (c) **A lead-based paint inspector licensed under IC 13-17-14 who**
13 **does not have a financial interest in the property must certify a**
14 **document concerning lead-based paint abatement filed under this**
15 **section.**

16 SECTION 2. IC 16-18-2-9.3 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE



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UPON PASSAGE]: **Sec. 9.3. "Advisory council", for purposes of IC 16-41-39.4, refers to the lead-safe housing advisory council established by IC 16-41-39.4-6.**

SECTION 3. IC 16-18-2-56.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 56.2. "Clearance examination", for purposes of IC 16-41-39.4, means an activity conducted by a clearance examiner who is licensed under IC 13-17-14 to establish proper completion of interim controls (as defined in 24 CFR 35.110).**

SECTION 4. IC 16-18-2-69.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 69.2. "Consumer product", for purposes of IC 16-41-39.4, means an item or a component of an item that is produced or distributed for:**

(1) sale to a consumer for use; or

(2) the personal use, consumption, or enjoyment of a consumer.

SECTION 5. IC 16-18-2-143, AS AMENDED BY P.L.234-2007, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.**

(b) "Fund", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-2.

(c) "Fund", for purposes of IC 16-41-39.4, has the meaning set forth in IC 16-41-39.4-3.1.

~~(c)~~ (d) "Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.

~~(d)~~ (e) "Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.

~~(e)~~ (f) "Fund", for purposes of IC 16-41-42, has the meaning set forth in IC 16-41-42-2.

SECTION 6. IC 16-18-2-198.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 198.5. "Lead-based paint activities", for purposes of IC 16-41-39.4, has the meaning set forth in IC 13-11-2-118.5.**

SECTION 7. IC 16-18-2-214.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 214.7. "Low income", for purposes of IC 16-41-39.4, means having not more than eighty percent (80%) of the median income level of households in a**

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particular county as determined annually by the federal Department of Housing and Urban Development.

SECTION 8. IC 16-18-2-292.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 292.7. "Primary prevention", for purposes of IC 16-41-39.4, means the removal of lead hazards before lead poisoning of an individual occurs.**

SECTION 9. IC 16-41-39.4-3, AS AMENDED BY P.L.135-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person that examines the blood of an individual described in section 2 of this chapter for the presence of lead must report to the state department the results of the examination not later than one (1) week after completing the examination. The report must include at least the following:

(1) With respect to the individual whose blood is examined:

- (A) the **full** name;
- (B) the date of birth;
- (C) the gender;
- (D) the race **and ethnicity**; ~~and~~
- (E) the full address, including street address, city, and ZIP code;**
- (F) the county of residence;**
- (G) the parent's or guardian's name and telephone number, where applicable; and**
- ~~(E)~~ **(H) any other information that is required to be included to qualify to receive federal funding.**

(2) With respect to the examination:

- (A) the date;
- (B) the type of blood test performed;
- (C) the person's normal limits for the test;
- (D) the results of the test; and
- (E) the person's interpretation of the results of the test.

(3) The names, addresses, and telephone numbers of:

- (A) the person **examining the blood**; and
- (B) the attending physician, hospital, clinic, or other specimen submitter.

(b) If a person required to report under subsection (a) has submitted more than fifty (50) results in the previous calendar year, the person must submit subsequent reports in an electronic format determined by the state department.

(c) If a person required to report under subsection (a) fails to provide complete information after notification by the state

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department, the state department may, in accordance with IC 4-21.5, assess a civil penalty against the person in an amount equal to two thousand five hundred dollars (\$2,500) for each incomplete report that is submitted after receipt of the notification. Money received by the state department under this subsection shall be deposited in the fund.

(d) The state department shall inform an elementary school or a secondary school attended by an individual about whom the state department receives a report under this section of the contents of the report. The school receiving the information:

(1) shall first enter into a written agreement with the state department to maintain the confidentiality of the information received; and

(2) shall not disclose the information to any person without the written consent of the individual or the parent or guardian of the individual.

SECTION 10. IC 16-41-39.4-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.1. (a) As used in this section, "fund" refers to the childhood lead poisoning prevention fund established by subsection (b).

(b) The childhood lead poisoning prevention fund is established for the purpose of funding childhood lead poisoning outreach and prevention activities. The fund shall be administered by the state department.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The fund consists of:

(1) civil penalties assessed under section 3 of this chapter;

(2) gifts; and

(3) appropriations from the general assembly.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 11. IC 16-41-39.4-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The lead-safe housing advisory council is established to advise the state department concerning housing related lead poisoning prevention activities.

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(b) The advisory council consists of the following members:

(1) The state health commissioner, or the state health commissioner's designee, who shall serve as the chairperson of the advisory council.

(2) The director of the Indiana housing and community development authority or the director's designee.

(3) The local health officer of each of three (3) local health departments, appointed by the state health commissioner to represent a diverse geographic and population mix, or the local health officer's designee.

(4) The following individuals, appointed by the governor:

(A) A representative of realtors in Indiana.

(B) A representative of home builders in Indiana.

(C) A pediatrician or other physician with knowledge of lead poisoning.

(D) A representative of the private lead-based paint abatement industry who is licensed under IC 13-17-14 to perform or supervise lead-based paint activities.

(E) A representative of a community based organization located in a community with a significant concentration of high risk lead-contaminated properties, as determined by a high prevalence in the community of:

(i) low income families having children with lead poisoning; and

(ii) housing units that were built before 1978.

(F) A parent of a child with lead poisoning.

(G) A representative from a child or health advocacy organization.

(H) A residential tenant.

(I) A representative of the paint and coatings industry.

(J) A representative of public housing administrators.

(K) A representative of residential rental property owners.

(L) A representative of licensed lead-based paint activities training providers.

(M) A representative of community action program agencies.

(N) A representative of the banking industry.

(O) An individual who is licensed as a lead-based paint activities inspector under IC 13-17-14.

(c) The advisory council shall meet at least quarterly. The first meeting of the advisory council must occur not later than July 1, 2008.

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(d) Not later than April 1, 2009, the advisory council shall submit to the governor, the attorney general, and, in an electronic format under IC 5-14-6, the legislative council a report containing recommendations of the advisory council concerning the following:

(1) Development of a primary prevention program to address housing related lead poisoning.

(2) Development of a sufficient number of licensed lead inspectors, abatement workers, and contractors.

(3) Ensuring lead-safe work practices in remodeling, rehabilitation, and weatherization work.

(4) Funding mechanisms to assist residential property owners with the cost of lead abatement and mitigation.

(5) A procedure for distribution of funds from the Indiana lead trust fund established by IC 13-17-14-6 to pay the cost of implementation of 40 CFR 745 for lead-based paint activities in target housing and child occupied facilities.

(6) A program to ensure that the resale of recycled building products does not pose significant risk of lead poisoning to children.

(7) Necessary statutory or administrative rule changes to improve the effectiveness of state and local lead abatement and other lead poisoning prevention and control activities.

(e) The state department shall staff the advisory council.

(f) The expenses of the advisory council shall be paid by the state department.

(g) A member of the advisory council who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Each member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(h) Each member of the advisory council who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(i) A consensus of the majority of the members appointed to the advisory council is required for the advisory council to take action on any measure, including final reports.

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SECTION 12. IC 16-41-39.4-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) A retail establishment that sells paint or painting products shall do all of the following:**

(1) Post in an area visible to customers a sign providing information concerning lead-based paint hazards.

(2) Offer for sale a lead test kit that is capable of determining the presence of a lead-based paint hazard.

(3) Provide to customers the federal Environmental Protection Agency pamphlet "Protect Your Family from Lead in Your Home" or a similar source of information approved by the state department.

(4) Ensure that employees who provide advice to customers concerning paint and paint products attend training programs concerning lead hazards.

(b) A person that sells, offers for sale, or distributes a consumer product shall not remove, erase, or obscure the visibility of a statement that:

(1) the manufacturer or wholesaler of the consumer product has placed on the consumer product or the container or wrapper in which the consumer product is contained; and

(2) specifies that the consumer product contains or may contain lead.

(c) A person shall not sell or offer for sale at wholesale or retail or distribute a consumer product, surface coating material, a food product, or food packaging that is:

(1) intended primarily for use by a child;

(2) reasonably expected to be accessible to, chewed by, or ingested by a child who is less than seven (7) years of age; or

(3) intended to be chewed or ingested by a child;

unless the consumer product, surface coating material, food product, or food packaging satisfies subsection (d).

(d) One (1) of the following requirements must be met for a person to be allowed to sell, offer for sale, or distribute an item described in subsection (c):

(1) The lead content of each of the following is less than six-hundredths percent (0.06%) by weight:

(A) The item.

(B) Each component of the item.

(C) The surface coating of the item.

(2) The person provides to the state department written documentation that:

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(A) the manufacturer or importer of the item has determined that the item is not a hazardous substance in accordance with 16 CFR 1500.23, as in effect on January 1, 2007; and

(B) meets the following requirements:

(i) Is consistent with 16 CFR 1500.23, as in effect on January 1, 2007.

(ii) Specifies the total amount of lead contained in the item.

(iii) Specifies the bioavailability of the lead contained in the item.

(iv) Specifies the accessibility to children of the lead contained in the item.

(v) Specifies the age and foreseeable behavior of children who are reasonably anticipated to be exposed to the item.

(vi) Specifies the foreseeable duration of an exposure described in item (v).

(vii) Specifies the reasonably anticipated marketing, patterns of use, and life cycle of the item.

(e) If the state department, based on:

(1) test results performed by a certified laboratory at the state department's request;

(2) information received from a federal agency; or

(3) other reliable information;

has reason to believe that the lead content of an item described in subsection (c) is likely to exceed the limits specified in subsection (d)(1), the state department may demand in writing that the person described in subsection (c) provide to the state department, not more than seven (7) days after the person receives the demand, the written documentation described in subsection (d)(2).

(f) If written documentation demanded under subsection (e):

(1) is not provided to the state department as required under subsection (e); or

(2) does not meet the requirements of subsection (d)(2);

the person of which the demand is made under subsection (e) shall immediately cease the action prohibited by subsection (c) until the person receives written notice from the state department that the person has met the requirements of this section.

(g) The state department may seize an item that is sold, offered for sale, or distributed in violation of this section.

(h) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

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(i) The state department shall, not later than May 1, 2009, adopt rules under IC 4-22-2 to implement this section. The rules adopted under this subsection:

(1) may:

(A) establish exceptions under which items described in subsection (c) may be sold, offered for sale, or distributed without the requirement to satisfy subsection (d) upon the state department's determination that the risk posed to children by the items is minimal;

(B) require labeling of an item to reflect that the item contains lead; or

(C) require a retailer to warn consumers of the presence of lead in an item by a means other than labeling under clause (B); and

(2) must be consistent with federal law.

SECTION 13. IC 16-41-39.4-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies to a child care provider that:

(1) is required to be licensed or registered under IC 12-17.2; or

(2) receives a voucher payment (as defined in IC 12-17.2-3.5-3).

(b) A child care provider that is located in a building that was built before 1978 shall:

(1) ensure that the building is assessed for lead hazards at least annually by a person who is licensed under IC 13-17-14-3; and

(2) if a lead hazard is found, keep children out of the area with the lead hazard until the lead hazard is remediated and the area is demonstrated to be lead hazard free through a clearance examination.

(c) Before enrollment of a child who is at least nine (9) months of age in a child care program, the parent or guardian of the child shall provide to the child care provider proof of a blood lead level test of the child.

(d) A child care provider shall ensure that at least one (1) employee of the child care provider attends training concerning lead hazards, including a lead-based paint rules awareness course approved by the department of environmental management, and does the following:

(1) Provides current lead hazard education to parents,

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guardians, caregivers, and child care provider employees.

(2) Maintains current knowledge concerning product recalls related to lead hazards.

(3) Performs regular child care facility assessments to identify lead hazards.

(4) Acts to remove any lead hazards from the child care facility.

(e) An employee of a child care provider that performs the individual's duties under subsection (d) in good faith and the child care provider that employs the employee are immune from civil liability related to the performance of the duties. This subsection does not apply to an act or omission that amounts to gross negligence or willful or wanton misconduct.

SECTION 14. IC 16-41-39.4-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state department shall, not later than July 1, 2009, adopt rules under IC 4-22-2 to establish a lead-safe work practices training program for contractors, renovators, and remodelers who:

(1) perform work on housing units that were built before 1978; and

(2) disturb lead-based paint in the housing units.

(b) The rules adopted under subsection (a) must comply with the federal Toxic Substances Control Act (15 U.S.C. 2681 et seq.) and any federal regulations adopted under the Act.

SECTION 15. IC 16-41-39.4-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) If the state department or a local health department determines that lead hazards in a housing unit have caused or contributed to elevated blood lead levels in an individual, the owner of the housing unit shall submit a remediation plan to the state department or local health department for approval.

(b) The remediation plan required under subsection (a) must include a plan for:

(1) a clearance examination after remediation activities are complete; and

(2) subsequent annual clearance examinations.

(c) Regardless of whether the plan states that the housing unit will not be rented to families with children, the state department or local health department may not approve a remediation plan that does not provide for remediation of the lead hazards.

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(d) Not later than ninety (90) days after approval of a remediation plan submitted under this section, the owner of a housing unit shall complete the remediation. However, the state department or local health department may grant the property owner an extension of time if the property owner demonstrates that the work cannot reasonably be completed within ninety (90) days and will be completed as expeditiously as possible.

(e) The owner of a housing unit for which a remediation plan is required shall do the following:

(1) Relocate tenants of the housing unit to a lead-safe dwelling at the owner's expense until the lead hazards in the housing unit have been remediated. However, a tenant may remain in the housing unit if:

(A) the remediation plan uses lead-safe work practices; and

(B) the owner documents to the state department or local health department that the workers designated to make the necessary repairs have been licensed under IC 13-17-14 to use lead-safe work practices.

(2) Offer to relocate a tenant if the tenant is expected to be without the use of a bathroom or kitchen in the housing unit for more than eight (8) hours, and relocate a tenant who accepts the offer.

(f) The owner of a housing unit may not evict a tenant or change the terms of a tenant's lease in retaliation for the tenant's report to a governmental agency related to the presence of lead hazards on the property. There is a rebuttable presumption that an owner is taking retaliatory action if the owner:

(1) initiates eviction proceedings;

(2) increases the rent; or

(3) makes other changes to the rental agreement;

less than two (2) years after the tenant's report is made to a governmental agency.

(g) The owner of a rental housing unit that was built before 1978 shall have one (1) lead-based paint inspection performed by a lead-based paint inspector licensed under IC 13-17-14 before the earliest of the following:

(1) The sale of the property.

(2) The renting of the housing unit to a new tenant.

(3) The submission by the owner of an application for a local or state building permit for renovation, remodeling, rehabilitation, or other construction activity.

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1 **(4) The date specified in the following schedule:**

2 **(A) For a housing unit built before 1940, January 1, 2009.**

3 **(B) For a housing unit built after 1939 and before 1950,**
4 **January 1, 2011.**

5 **(C) For a housing unit built after 1949 and before 1960,**
6 **January 1, 2013.**

7 **(D) For a housing unit built between 1960 and 1978,**
8 **January 1, 2015.**

9 **The presence of lead-based paint is considered to be an**
10 **environmental defect and is subject to IC 13-25-3.**

11 SECTION 16. IC 34-30-2-83.4 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE UPON PASSAGE]: **Sec. 83.4. IC 16-41-39.4-8(e)**
14 **(Concerning the performance by a child care provider's employee**
15 **of duties related to lead hazards).**

16 SECTION 17. An emergency is declared for this act.

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